

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

CHARLES JAMES ATCITY,

Plaintiff,

v.

20-CV-00515-DHU-DLM

THE UNITED STATES OF AMERICA,

Defendant.

DECLARATION OF ALEXANDER H. PIÑA

Pursuant to 28 U.S.C. § 1746, Alexander H. Piña declares as follows:

1. I am the Acting Compliance Officer and Safety Officer at Kayenta Health Center (KHC), an Indian Health Services medical facility located in Kayenta, Arizona. My job responsibilities include receiving tort claims, initiating the internal processes to review these claims, and managing all safety issues at KHC.
2. I make this declaration in support of the United States' Motion to Dismiss, based on personal knowledge and a review of the business and personnel records regularly maintained by KHC and the United States Department of Health and Human Services ("HHS").
3. KHC, a hospital managed by the HHS, had a non-personal services contract with VISTA Staffing Solutions, Inc. ("VISTA"), Contract No. V797D-30227, under which VISTA agreed to provide Emergency Medicine Physician Services for the KHC ("VISTA Contract") in accordance with the Performance Based Statement of Work ("VISTA SOW"). True and correct copies of the VISTA contract and VISTA SOW are attached as Exhibit C-1 and C-2.
4. Pursuant to the VISTA Contract, VISTA provided the medical services of Dr. Jose Borrego-Acosta to work at KHC from May 20, 2016 to December 31, 2016. VISTA confirmed the provision of medical services by Dr. Borrego-Acosta by a letter dated November

28, 2016. A true and correct copy of the confirmation letter is attached as Exhibit C-3.

5. Pursuant to the VISTA Contract, VISTA also provided the medical services of Dr. Jon A. Ossen to work at KHC from July 12, 2013 to December 31, 2016. VISTA confirmed the provision of medical services by Dr. Ossen by a letter dated November 28, 2016. A true and correct copy of the confirmation letter is attached as Exhibit C-4.

6. Dr. Noall Wolff also worked as a contractor at KHC from August 16, 2016 to August 20, 2016 and on September 6, 2016 to September 8, 2016 pursuant to the same contract and SOW between KHC and VISTA Staffing Solutions, Inc. *See* Exhibits C-1 and C-2 .

7. VISTA confirmed the provision of medical services at KHC by Dr. Wolff by a declaration of VISTA V.P. of Operations Lynn Holton, dated August 24, 2023, which is attached as Exhibit C-5.

8. At no time during the contract period were Dr. Borrego-Acosta, Dr. Ossen, or Dr. Wolff employed by or on the payroll of KHC or the Department of Health and Human Services.

9. KHC, a hospital managed by the HHS, also had a non-personal services contract with AB Staffing Solutions, LLC (“AB Staffing”), Contract No. V797D-40126, under which AB Staffing agreed to provide licensed physician services in support of direct patient care for the Medical Staff Department at the KHC (“AB Staffing Contract”) in accordance with the Performance Work Statement for Non-Personal Services (“AB Staffing PWS”). True and correct copies of the AB Staffing Contract and the AB Staffing PWS are attached as Exhibits C-6 and C-7.

10. Pursuant to the AB Staffing Contract, AB Staffing provided the medical services of Dr. Sandra Merino-Navarro to worked at KHC from February 29, 2016 to April 30, 2016 and May 1, 2016 to September 30, 2016. AB Staffing confirmed the provision of medical services

by Dr. Merino-Navarro by letters dated February 1, 2016 and March 22, 2016. True and correct copies of the confirmation letters are attached as Exhibits C-8 and C-9.

11. At no time during the contract period was Dr. Merino-Navarro employed by or on the payroll of the KHC or the Department of Health and Human Services.

12. Pursuant to the VISTA Contract and SOW, VISTA purchased medical malpractice liability insurance covering Dr. Borrego, Dr. Ossen and Dr. Wolff, which was in effect at all relevant times. True and correct copies of the Certificates of Liability Insurance demonstrating the same are attached as Exhibits C-10, C-11, and C-12.

13. Pursuant to the AB Staffing Contract and PWS, AB Staffing purchased medical malpractice liability insurance covering Dr. Merino-Navarro, which was in effect at all relevant times. A true and correct copy of the Certificate of Liability Insurance demonstrating the same is attached as Exhibit C-13.

14. KHC, a hospital managed by the HHS, had a non-personal services contract with Robison Medical Resource Group, LLC (“Robison”), Contract No. V797P-7285A, to obtain Licensed Clinical Nurse Services from Robinson between August 15, 2016 and September 30, 2016 for the Emergency Department at the KHC (“Robison Contract”) in accordance with the Performance Work Statement for Non-Personal Services (“Robison PWP”). True and correct copies of the Robison Contract at the Robison PWP are attached as Exhibits C-14 and C-15.

15. Pursuant to the Robison Contract, Robison provided the services of Brian Miller, R.N. and Casey Patton, R.N. to work at KHC Emergency Department between August 15, 2016 and September 30, 2016. *Id.*

16. At no time during the contract period were R.N.s Brian Miller and Casey Patton employed by or on the payroll of the KHC or the Department of Health and Human Services.

17. Pursuant to the Robison Contract and PWS, Robison purchased medical malpractice liability insurance covering R.N.s Brian Miller and Casey Patton, which was in effect at all relevant times.

18. Neither KHC, nor HHS paid doctors Jose Borrego-Acosta, Jon Ossen, Noall Wolff, and Sandra Merino Navarro, and nurses Brian Miller and Casey Patton. Rather, KHC paid its contractors, VISTA, AB Staffing, and Robison for providing the contracted medical services to KHC.

19. Neither KHC, nor HHS exercised day-to-day control and supervision over doctors Jose Borrego-Acosta, Jon Ossen, Noall Wolff, and Sandra Merino Navarro, and nurses Brian Miller and Casey Patton.

20. KHC and HHS intended that the individuals providing medical services to HHS pursuant to the VISTA Contract, AB Staffing Contract, and Robison Contract be employees of VISTA, AB Staffing and Robison, and not employees of KHC or the United States Department of Health and Human Services.

21. Neither KHC, nor HHS provided health benefits, paid leave, educational funds, housing, or transportation to and from the job site, to individuals who worked at KHC pursuant to the VISTA Contract, AB Staffing Contract, and Robison Contract.

22. The contracts with VISTA, AB Staffing and Robison for the provision of medical services were “all inclusive” based on the payments of the applicable hourly rates. VISTA, AB Staffing and Robison were responsible for paying for benefits including necessary travel, per diem, housing, and applicable taxes for the doctors and nurses who they provided to KHC.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 01 day of September 2023.

Alexander H.
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 Digitally signed by Alexander
H. Pina -S
Date: 2023.09.01 10:12:56
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ALEXANDER H. PIÑA
Acting Compliance Officer and Safety Officer at Kayenta Health Center